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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 966

G. & K. INVESTMENT COMPANY, *Petitioner,*

v.

GEORGE M. HARRISON; NEWTON BRYANT; MONROE BRYANT; PARALEE BRYANT HARTWELL; ROSA BRYANT; JAMES W. BRYANT, Guardian of the Estate of ROSA BRYANT, N.C.M.; KERMIT W. BRYANT; COLUMBUS M. BRYANT; LILLIE MAE BRYANT; JAMES W. BRYANT; LILLIAN A. CARTER; JERRY LEE BRYANT; CHARLES B. BRYANT; GEORGE W. BRYANT, JR.; CHESTER K. BURNHAM; JOE R. SCROGGINS; L. L. ROBERTS; FLOYD A. WILLIAMS, JR.; HALE E. ROBERTS; NELSON CASE; D. A. BIGLANE; CHESTER BURNHAM CHEVROLET CO., INC., a Corporation; W. R. FAIRCHILD CONSTRUCTION CO. LTD.; R. PEARCE PHILLIPS; MICHAEL L. CARR, JR.; W. K. BOWEN; JOSEPH WILLIAM KNOX; and J. C. HUTTO, *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Mississippi, entered in the above-entitled case on December 7, 1959.

CITATIONS TO OPINIONS BELOW

The opinion of the Supreme Court of Mississippi, printed in the Appendix, infra, p. 1a, is reported in 115 So. 2d 918, and not yet officially reported in Mississippi Reports.

JURISDICTION

The judgment of the Supreme Court of Mississippi was entered on December 7, 1959. Appendix, infra, p. 12a. Rehearing was denied on January 18, 1960. (R. 241). By orders dated April 14, 1960, and May 16, 1960, this Court extended the time within which to file this petition for writ of certiorari to May 14, 1960, and May 28, 1960, respectively. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257(3), since petitioner has been deprived of property without due process of law as required by the Fourteenth Amendment to the Constitution of the United States.

QUESTION PRESENTED

Whether the Supreme Court of the State of Mississippi can divest petitioner, an assignee, of property lawfully vested in the original assignor by the Mississippi statute of descent and distribution, by creating a judicial exception to the statute, without violating the due process of law guaranteed to petitioner by the Fourteenth Amendment to the Constitution of the United States?

CONSTITUTIONAL AMENDMENT AND STATUTE INVOLVED

United States Constitution, Fourteenth Amendment (pertinent part):

"Section 1. . . .; nor shall any State deprive any person of life, liberty, or property, without due process of law; . . ."

Mississippi Code 1942 Annotated:

"§ 470 Descent of property as between husband and wife.

If a husband die intestate, and do not leave children or descendants of children, his widow shall be entitled to his entire estate, real and personal, in fee simple, after payment of his debts; but where the deceased husband shall leave a child or children, by that or a former marriage, or descendants of such child or children, his widow shall have a child's part of his estate, in either case in fee simple. If a married woman die, owning any real or personal estate not disposed of, it shall descend to her husband, and her children or their descendants if she have any surviving her, either by a former husband or by the surviving husband, in equal parts, according to the rules of descent. And if she have children, and there also be descendants of other children who have died before the mother, the descendants shall inherit the share to which the parent would have been entitled if living as coheirs with the surviving children. But if she have no children or descendants of them, then the husband shall inherit all of her property." (Formerly § 1404, Mississippi Code of 1930)

HOW FEDERAL QUESTION IS PRESENTED

The federal question presented by this petition was raised by petitioner in the trial court in its Answer of Cross-Defendant to Cross-Bill, and also in its Further Answer of Cross-Defendant to the Cross-Bill, both pleadings appearing in the Appendix of the record as Exhibits "A" and "B", respectively, to Motion of Appellee to Perfect Record. (R. 252) The question tion was also presented to the Supreme Court of the State of Mississippi in Reply Brief on Behalf of the Appellee, G. & K. Investment Company. It was argued to the Supreme Court of Mississippi on page 37 of that brief:

> "We call the Court's attention to the final proposition, that in view of the existence of the affirmative statute covering the right of inheritance of Joseph William Knox, *Section 470, Mississippi Code of 1942,* to deprive him of that right would be violative of the Constitution of the United States, and of the Constitution of the State of Mississippi, in that he would be deprived of his property without due process of law."

And again on page 38 of the same brief:

> "To deprive him of that right would be violative of the Constitution of the United States and the Constitution of the State of Mississippi, in that he would be deprived of his property without due process of law."

STATEMENT

A. Summary of Litigation

Petitioner, a Mississippi corporation, filed a bill of complaint in the Chancery Court of Pike County, Mississippi, against respondents, asking that the oil, gas, and mineral leases on the entire interest claimed by respondents in 160 acres of land in an oil field be set aside, insofar as the leases cast a doubt, cloud, or suspicion on the fractional leasehold estate in the 160 acres owned by petitioner, and for other relief. (R. 1-16). The Chancery Court held an interlocutory hearing and on January 24, 1959, ordered the appointment of a Receiver. (R. 144-146). The Chancery Court did not entertain the case on the merits. (R. 144-146).

The respondents appealed to the Supreme Court of Mississippi from the interlocutory decree of the Chancery Court. Respondents alleged that the Chancery Court of Pike County erred in appointing the receiver because the evidence failed to establish the legal requisites for a receivership. The evidence affirma-

tively showed the absence of circumstances justifying the appointment of a receiver, and the evidence "shows conclusively that Joseph William Knox, through whom the appellee claims, owns no interest in the properties in litigation." (R. 226).

The Supreme Court of Mississippi found that the petitioner had no interest in the oil lands in question, hence had no "right to obtain a receivership for the property involved." That court based its decision on its determination that Joseph William Knox, the original assignor of the leasehold, was estopped to inherit any part of the estate of Alpha Knox, his wife, under the Mississippi statute of descent and distribution because he had entered into a bigamous ceremonial marriage subsequent to his marriage to Alpha.

B. Summary of Facts

Joseph William Knox married Alpha Bryant in August, 1923. (R. 204) They lived together as man and wife until August, 1928, when Alpha was committed to a state insane asylum. (R. 220) In March, 1929, Joseph married Lucile Brown without having obtained a divorce. (R. 205) In 1930 Joseph heard that the Grand Jury in Forrest County was considering bringing a bigamy indictment against him, although it had been his mistaken belief that Alpha's commitment terminated their marriage. (R. 220). He consulted a lawyer who drew up a divorce petition for him. He went to the asylum and took Alpha out to a notary where she executed and acknowledged a waiver of process and appearance. (R. 211). On March 31, 1930, the Chancery Court of Forrest County, Mississippi, decreed a divorce on the ground that Alpha had been insane at the time of marriage. (R. 170). A certificate of the superintendent of the asylum to the effect that

Alpha was insane was not filed in the court until April 1, 1930. (R. 168). That this divorce was void is conceded by all parties. After the decree, Joseph again married Lucile Brown and lived with her until her death. Alpha died intestate in the asylum on August 12, 1934. (R. 207).

At the time of her marriage to Joseph, and at the time of her death, Alpha owned a one-seventh interest in a 60-acre tract, and a one-eighth interest in a 100-acre tract, both tracts together comprising the 160 acres involved in this suit. (R. 91). She had inherited these interests from her parents. (R. 89-91, 228-229).

On May 12, 1958, Joseph William Knox executed an oil, gas, and mineral lease (R. 17) in the property inherited from Alpha to one Louis H. Magee, who, thereafter, assigned that lease to petitioner. (R. 18).

C. Facts and Law Involved in the Denial of Due Process

When Alpha Bryant Knox died intestate on August 12, 1934, her estate including the property involved in respondent's lease, passed to her husband, Joseph, under Section 470* of the Chapter of Descent and Distribution of the Code of the State of Mississippi. The only statutory exception to this applies to persons who unlawfully kill the intestate from whom they would inherit. (Section 479*). Therefore, Knox became vested with the ownership of his deceased wife's property and the decision of the State Supreme Court is judicial legislation that purports in 1959 to divest petitioner, Knox's successor in interest, of property irre-

* Sections 1404 and 1413 of the Code of 1930 were applicable in 1934. Both were reenacted in the Code of 1942 without change and the current designation is used in this Petition.

vocably vested in Knox in 1934 under the statutes of the State of Mississippi.

REASONS FOR GRANTING THE WRIT

The Supreme Court of Mississippi has, by judicially establishing an exception to the Mississippi statute that the legislature did not see fit to enact, usurped the legislative function and in so doing has taken petitioner's property against the Constitutional Prohibitions contained in the Fourteenth Amendment and given it to respondents, thus resulting in the denial of due process. How, within the ambit of the Fourteenth Amendment of the Constitution of the United States, is it possible that property inherited by a man from his wife in 1934 in accordance with the statute of descent and distribution of a state can be taken from his ultimate assignee by a court of that state 25 years later?

Section 470 of the Mississippi Code provides that a husband is entitled to inherit from his wife. Only one exception was enacted by the Mississippi legislature. Section 479 provides that if any person wilfully causes or procures the death of another, he shall not inherit from that person. No other exception to Section 470 can be found in the statutes of the State of Mississippi.

It is true that Joseph William Knox attempted to divorce his wife Lucile, but that divorce was void and had no effect upon their relationship. Under Mississippi law, "[a] void judgment is without legal effect and from it no rights can be obtained and it neither binds nor bars anyone." *Lake* v. *Perry*, 95 Miss. 550, 49 So. 569. When Lucile died in 1934, Joseph was still her husband, and by virtue of that fact under Mississippi law, he succeeded to her estate.

It is firmly established under Mississippi law that the legal title to lands under the statute of descent descends to the heirs at the time of the intestate's death. See *Harvey* v. *Johnson*, 111 Miss. 566, 71 So. 824, and *Gift* v. *Love* 164 Miss. 442, 144 So. 562, 86 A.L.R. 63, 71. This is in accord with the rule generally prevailing in the United States. See *Randall* v. *Krieger*, 90 U.S. 137.

Such a title is a vested right and includes the right to execute a lease of the oil, gas, and mineral rights in the land. Property rights in land include the right to use, lease, and dispose of it for lawful purposes, and those rights are protected by the Constitution. *Terrace* v. *Thompson*, 263 U.S. 215.

The only law applicable to Knox and the lands owned by his wife was Section 470 of the Mississippi Code, the Chapter of Descent and Distribution. Absent an applicable statutory exception, title to his wife's estate vested in Knox when she died. The Supreme Court of Mississippi cannot create an exception not specifically provided and enacted by the Mississsippi legislature. When it did so, it exceeded the bounds of the judicial function and deprived Knox of his lands and petitioner of its lease without due process of law.

The action of the court below was exactly that proscribed by this court in *United States* v. *Cooper Corp.*, 312 U.S. 600, at 605, when it said, "But it is not our function to engraft on a statute additions which we think the legislature logically might or should have made." In an earlier case, *White* v. *United States*, 191 U.S. 545, this Court used the following language at page 551:

> "It is equally true that it is the business of the courts to decide what the law is, and not by consideration or surmises as to the policy of the government, have the effect to adjudge that to be law which has not been so enacted by the legislature. Dewey v. United States, 178 U.S. 521."

It is the contention of the petitioner that Section 470 and Section 479 of the Mississippi Code are the only laws applicable to the descent of intestate land in the state. Section 479, of course, was not applicable in this case, leaving only Section 470, which states: "But if she have no children or descendants of them, then the husband shall inherit all of her property." There is no proviso in Section 470, or indeed, anywhere in the statutes of Mississippi, that could have prevented the operation of Section 470 in passing Alpha Knox's estate to her surviving spouse, Joseph Knox. The Mississippi Supreme Court violated the principle laid down by Justice Brandeis in *Ebert* v. *Poston*, 266 U.S. 548, at 554:

> "The judicial function to be exercised in construing a statute is limited to ascertaining the intention of the legislature therein expressed. A *casus omissis* does not justify judicial legislation."

To permit the decision of the Supreme Court of Mississippi to stand would give a court license to interpose its own rules on the devolution of property in derogation of the law enacted for that purpose in each of the several states.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

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APPENDIX

APPENDIX

Mississippi Supreme Court Opinion

IN THE SUPREME COURT OF MISSISSIPPI

No. 41,344

GEORGE M. HARRISON, ET AL.

v.

G. & K. INVESTMENT COMPANY

ETHRIDGE, *Justice:*

We have here an appeal from an interlocutory decree of the Chancery Court of Pike County, appointing a receiver to take the possession and control of 160 acres of land in an oil field. Appellee asserts a fractional interest in the minerals, under an oil, gas and mineral lesse. Ownership by appellants of the remaining interests therein is not challenged. This appeal with supersedeas was granted by a Justice of this Court, after it had been refused by the trial court. The issue involves the rule of estoppel of a husband to claim as an heir of his deceased wife, after marriage during her lifetime to another person without a precedent divorce.

On December 6, 1958, G. & K Investment Company, a Mississippi Corporation, filed a bill of complaint in the Chancery Court of Pike County against George M. Harrison and others, asking that the oil, gas and mineral leases on the entire interest claimed by the defendants be set aside, insofar as the leases cast a doubt, cloud or suspicion on the fractional leasehold estate in the 160 acres of land, allegedly owned by appellee, G. & K. Investment Company, and for other relief.

G. & K. Investment Company claims ownership of a leasehold interest covering an undivided one-seventh interest in the oil, gas and minerals in, on and under the N½ of the NW¼ of NW¼ and the NW¼ of SW¼ of Section 14, Township 2 N, Range 8 E, in said County (hereinafter re-

ferred to as the 60 acre tract), and ownership of a leasehold interest covering an undivided one-eighth interest in the oil, gas and minerals in, on and under the NE¼ of NW¼, SW¼ of NW¼ and S½ of NW¼ of NW¼ of said Section, Township and Range (Hereinafter referred to as the 100 acre tract); all of which land was patented by the United States Government to Ebenezer Bryant, but which 60 acre tract was thereafter conveyed by the patentee to his wife Omega Bryant, both of whom died intestate many years ago.

The leasehold interest claimed by the appellee G. & K. Investment Company was alleged to be under and by virtue of an oil, gas and mineral lease executed by Joseph William Knox, as lessor, on May 12, 1958, to Louis H. Magee, as lessee.

Thereafter the said oil, gas and mineral lease was duly assigned by the said Louis H. Magee to the appellee G. & K. Investment Company.

The lessor of the said Louis H. Magee, to wit, Joseph William Knox, in executing the oil, gas and mineral lease is claimed by the appellee G. & K. Investment Company to have been the surviving husband and sole heir at law of Alpha Bryant Knox, who died on August 12, 1934, owning the undivided interest in the 60 acre tract and in the 100 acre tract hereinbefore mentioned; and that the said Alpha Bryant Knox inherited from her father and mother, Ebenezer and Omega Bryant, a one-seventh undivided interest in the 60 acre tract and a one-eight undivided interest in the 100 acre tract.

The appellee alleged that an oil well was then in production on the common property, and asked that a receiver be appointed to take charge of and control the entire 160 acre tract on the ground that the appellee was "in actual and imminent danger of loss of property" and that "irretrievable and irreparable injury" to the complainant

G. & K. Investment Company would result if a receiver were not appointed.

The allegations of the application for the appointment of a receiver were denied, and it was averred by the defendants that neither Joseph William Knox nor the appellee owned any interest whatsoever in the land or minerals. A hearing on the application for the appointment of a receiver was set by a fiat of the court for January 8, 1959. On the day before the hearing, the defendants George M. Harrison and others, filed a sworn answer to the bill of complaint of the appellee, which did not waive answer under oath.

At the hearing of the application for the appointment of a receiver a motion was filed by the defendants to dismiss the application for a receiver, to sustain their plea in bar of the suit, and to dismss the bill of complaint. The application for receivership was heard and on January 21, 1959, the trial court addressed a letter to all of the attorneys advising them that he had decided to appoint a receiver of the property, and requested that a decree be drawn accordingly. This was done on January 24, 1959, and the decree was so entered.

At the time of the signing of this decree the defendants moved the court for acceptance of a bond in lieu of receivership, as is provided for in the discretion of the court under Section 1358, Code of 1942, granting such power to the court, but this motion was overruled.

An interlocutory appeal from this decree was requested by the defendants but the same was denied and the appeal with supersedeas was granted by a Justice of this Court, and the amount of the bond in lieu of receivership was fixed by such Justice in the amount of $62,500, and the bond was accordingly given and approved.

The oil well or wells were in production on the 160 acres of land at the time of the hearing of the application for appointment of a receiver, but the proceeds from the pro-

duction of oil through these wells are being held in abeyance, at least as to the fractional interest claimed by the appellee G. & K. Investment Company, pending the outcome of this litigation.

It appears that Joseph William Knox, through whom the appellee claimed as the ultimate lessee, married Alpha Bryant Knox in August 1923; that they lived together as husband and wife until August 11, 1928, at which time the said Alpha Bryant Knox was committed to the Mississippi State Insane Asylum at Jackson, Mississippi, as an insane person.

On March 23, 1929, Joseph William Knox, while married to Alpha Bryant Knox, entered into a ceremonial marriage with one Lucile Brown in violation of the laws of the State of Mississippi. He continued to live with Lucile Brown until her death. During the lifetime of Lucile Brown, on March 27, 1930, Joseph William Knox went to the said State Insane Asylum and carried Alpha Bryant Knox before a notary public on Lynh Street in Jackson, Mississippi, and caused her to sign a waiver of the service of process on her in a divorce proceeding which was filed and heard during a term of the Chancery Court of Forrest County, Mississippi, on March 31, 1930. Although the said Joseph William Knox had lived with Alpha Bryant Knox for approximately 5 years before she was committed to the Insane Asylum he obtained a decree of divorce in the Chancery Court of Forrest County, Mississippi, where he resided, on March 31, 1930, and in which decree it was adjudicated that Alpha Bryant Knox was hopelessly and incurably insane, and which fact he contended was true at the time of the marriage, but unknown to him—a good ground for divorce. A certificate from Dr. C. D. Mitchell, Superintendent of the said State Insane Asylum, to the effect that Alpha Bryant Knox was in fact hopelessly and incurably insane, was marked filed on April 1, 1930, the next day after the granting of the decree of divorce from her at the instance of

the said Joseph William Knox. Whether or not this certificate of Dr. Mitchell formed the basis of the adjudication by the chancellor in the decree of the day before that Alpha Bryant Knox was hopelessly and incurably insane is not shown. But the decree also adjudicated that she was insane at the time of her marriage to Joseph William Knox, and that the latter did not know of such fact. However, he had lived with her for approximately 5 years after his marriage to her as aforesaid, prior to her commitment to the State Insane Asylum on August 11, 1928.

It was alleged in the answer of the defendants that someone "reported the wrongful action of the said Joseph William Knox to the grand jury sitting in Forrest County, Mississippi, for the purpose of bringing an indictment against him for the crime of bigamy;" that while the matter was being considered by the grand jury, a white friend of Joseph William Knox informed him that bigamy charges were pending before the grand jury; that acting upon the advice of his white informant, the said Joseph William Knox immediately filed his sworn bill for a divorce against Alpha Bryant Knox in the Chancery Court of Forrest County.

At the hearing of the application for the receivership in this cause, in the Chancery Court of Pike County, the defendants introduced Joseph William Knox as a witness, and he testified to the foregoing facts, and further that he was acting under coercion in obtaining the divorce from Alpha Bryant Knox in the Chancery Court of Forrest County, and to avoid a criminal prosecution.

It was further alleged in the answer of the defendants, and it is undisputed, that on April 7, 1930, the said Joseph William Knox again entered into a ceremonial marriage with Lucile Brown, the same person with whom he had entered into a ceremonial marriage on March 23, 1929.

The defendants further charge and aver in their answer in the Chancery Court of Pike County" that the said

Joseph William Knox and all parties in privity with him are precluded and estopped from attacking or questioning the validity of the decree entered by the Chancery Court of Forrest County, Mississippi, dissolving the bonds of matrimony between Joseph William Knox and Alpha Bryant Knox, and that no attack, either direct or collateral, may be made by the said G. & K. Investment Company upon said final decree of the Chancery Court of Forrest County, Mississippi, in this proceeding or any proceeding filed in the Chancery Court of Pike County, Mississippi."

The answer further alleges that "the named defendants further charge and aver that the said Joseph William Knox expressed no interest in the property in controversy for a period of 24 years, after the death of Alpha Bryant Knox, and that Joseph William Knox and all parties in privity with this individual, are precluded and estopped from claiming an interest in the real property owned by Alpha Bryant Knox at the time of her death by reason of laches and equitable estoppel." As heretofore stated, answer under oath was not waived in the bill of complaint for the cancellation of the oil, gas and mineral leases as a cloud upon the alleged title of the appellee or in the application for the appointment of a receiver, and the answers of the defendants thereto were made under oath. At the hearing of the application for a receiver, the testimony of D. A. Biglane, who was introduced by the appellee, and the testimony of Joseph William Knox, who was called as a witness by the defendants, was the only oral testimony taken. Moreover, the testimony of Joseph William Knox admitted all of the material facts alleged as such by the defendants in their answers.

After the granting of the interlocutory appeal and, to-wit on the 28th of August, 1959, the attorneys for the respective parties stipulated and requested, in substance, that this Court should decide all of the controlling principles involved under the record before us, the same as if the hear-

ing for the receivership and the plea of estoppel had been heard on the merits, and that we finally dispose of the controlling principles of law on the issues involved in the case.

The chancellor stated on more than one occasion during the hearing that he was not hearing the case on its merits, and he stated in his written opinion that he was appointing the receiver for the reason that in his opinion the appellee had a probable right or interest in the property in controversy, and that a receiver should be appointed on account of the fact that one of the heirs at law of Ebenezer and Omega Bryant, other than Alpha Bryant Knox, was now an inmate of the State Insane Asylum, and that another one of such heirs was in the penitentiary in Ohio. The chancellor ordered that all of the existing contracts for the development of the land for oil should remain undisturbed and that any further agreements or contracts in regard thereto should be first submitted to the court for approval.

The appellee relies on Section 470 of the Chapter of Descent and Distribution in this state, which provides, among other things: "If a married woman die, owning any real or personal estate not disposed of, it shall descend to her husband, and her children or their descendants if she have any surviving her, * * *." In the instant case it is conceded that neither Joseph William Knox nor Alpha Bryant Knox had any children or descendants of children surviving them, and that she died intestate.

The appellee cites in support of its contention that it would be judicial legislation for this Court to engraft any exceptions on the above mentioned statute, the case of Williams v. Lee, 130 Miss. 481, 94 So. 454, 28 A.L.R. 1124.

In the case of Williams v. Lee, supra, the Court, in discussing the then statute of descent and distribution of property in this State, did say that: "The wife is made an heir to the husband. The courts have no authority to engraft exceptions on the statute. And, conceding that

the wife by estoppel could be deprived of her right of asserting her heirship to her husband, the evidence in this case shows no element of estoppel. The nearest approach to it was mere silence on the part of the legal wife. There is nothing in the record to show she either encouraged or assented to the illegitimate marriage of her husband. We cannot give our assent to the proposition that mere knowledge and silence on her part estopped her from asserting her heirship." In the instant case, however, there is no claim that Alpha Bryant Knox, an insane person, acquiesced by mere silence in the illegal marriage of Joseph William Knox to Lucile Brown, but the proof shows that by the affirmative and positive action of Joseph William Knox he married Lucile Brown the first time when he had not either obtained or attempted to obtain a divorce from Alpha Bryant Knox, and the question presented is as to whether or not he can be heard to challenge the validity of a divorce decree that was obtained at his instance, at a time of approximately one year after he had entered into a ceremonial marriage with Lucile Brown without having obtained a divorce from his lawful wife Alpha Bryant Knox. We must conclude that the case of Williams v. Lee, supra, is distinguishable on its facts and in principle from the instant case.

This Court in the case of Minor v. Higdon, 215 Miss. 513, 61 So. 2d 250, recognized that Will James Minor died intestate on May 12, 1951, owning a small amount of real and personal property situated in Humphreys County, and that Zelma Minor, whom the trial court had held was entitled to inherit from the intestate Will James Minor, was, in the opinion of this Court on Appeal, estopped from asserting such claim of inheritance because of the fact that after Will James Minor had deserted her she had entered into a ceremonial marriage with one Clarence Robinson without either Will James Minor or Zelma having obtained a divorce.

In the case of Minor v. Higdon, supra, this Court said among other things the following: "There is a difference of opinion among the courts of other states as to the effect of a second or bigamous marriage of a husband or wife upon his or her right to share in the estate of the deceased spouse." The court them discussed the difference of opinion among the courts of other states and then stated: "The decisions of our own Court which have been cited above and in accordance with which this case has been decided show that our own Court has adopted the principle that a wife or a husband who has contracted a bigamous marriage with another person during the lifetime of the spouse in whose estate a right to inherit is asserted is barred from asserting such right. * * *."

The Court in its opinion had cited Woodson v. Grand Lodge K. of H., 97 Miss. 210, 52 So. 457; Williams v. Johnson, 148 Miss. 634, 114 So. 733; Harper v. Fears, 168 Miss. 505, 151 So. 745, 93 A.L.R. 341; Joy v. Miles, 190 Miss. 255, 129 So. 771; Walker v. Matthews, 191 Miss. 489, 3 So. 2d 820; Stanley v. Stanley, 201 Miss. 545, 29 So. 2d 641, and had considered the case of Williams v. Lee, supra, on which the appellee relies, and stated in Minor v. Higdon, supra, the following: "But there was no bigamous marriage by the first wife in the Williams case; and the Court in its opinion conceded that there might be cases in which the wife by estoppel could be deprived of her right of asserting her heirship to her husband." But the Court further stated that the evidence showed no element of estoppel in the Williams case.

The appellee correctly observes in its briefs that in certain cases relied upon by the appellants the contest was between two women where each of them claimed to be the lawful wife and heir at law of the deceased, and involved the collection of insurance occurring upon the death of the decedent. That was true in the cases of Woodson v. Grand Lodge K. of H., supra, and Joy v. Miles, supra; but this

was not the situation in the cases of Walker v. Matthews, supra, Stanley v. Stanley, supra; and Minor v. Higdon, supra. The right of inheritance of real estate was involved in these last named cases.

It is likewise true that the annotation from 71 A.L.R. 285, cited in one of our cases, dealt with cases from California, Indiana, New Hampshire and North Carolina, which were based upon a statute of those states, respectively, which declared that the marriage of one spouse to another person without a divorce having been obtained from the former marriage would estop the offending spouse from inheriting from his or her former spouse, but our Court held the same to be true in this State in the absence of a statute in that behalf, in the cases of Minor v. Higdon, supra; Stanley v. Stanley, supra; and Walker v. Matthews, supra.

Moreover, in the case of Cratin v. Cratin, 178 Miss. 831, 173 So. 415, and particularly on the suggestion of error therein, the Court held that a husband could not have a divorce decree set aside where it was rendered at his instance, with knowledge, actual or presumed, of its irregularity.

Of course in the instant case Joseph William Knox is not asking that the divorce decree granted in Forrest County on March 31, 1930, be set aside, but in effect it is asked that it be disregarded as being void and of no effect, and for Joseph William Knox to be declared the surviving husband and sole heir at law of Alpha Bryant Knox, and that he be held to have inherited her interest in the land and minerals here in controversy as her sole heir at law.

It is true that our cases held that an absolute void decree, order or judgment may be assailed anywhere on collateral attack, but the right to do so is limited to those who are not estopped by affirmative conduct, laches or some other equitable doctrine.

It would unduly prolong this opinion to discuss the factual situation involved in each of the cases hereinbefore mentioned, since it appears to be well settled by these cases, whether they involve the collection of life insurance or the inheritance of real property, that where one spouse enters into a ceremonial marriage with another person without the bonds of matrimony having been dissolved between him or her and the former spouse, the person so entering into such bigamous marriage is estopped from inheriting any part of the estate of the former spouse.

This conclusion renders it unnecessary that we reach the question of whether the receivership in the instant case was justified, since it follows under our holding that neither Joseph William Knox nor the appellee is the owner of any interest in the 160 acres of land or the minerals involved in the oil, gas and mineral leases, and that they were therefore without the right to obtain a receivership for the propery involved.

REVERSED AND JUDGMENT HERE FOR THE APPELLANTS.

McGUIRE, C. J., AND HALL, HOLMES AND GILLESPIE, JJ., CONCUR.

Judgment of Mississippi Supreme Court

Monday, December 7, 1959, Court Sitting

No. 41,344

GEORGE M. HARRISON, ET AL.

v.

G & K INVESTMENT COMPANY.

This cause having been submitted at a former day of this Term on the record herein from the Chancery Court of Pike County and this Court having sufficiently examined and considered the same and being of the opinion that there is error therein doth order and adjudge and decree that the decree of said Chancery Court rendered in this cause on the 24th day of January, 1959—be and the same is hereby reversed and the bill dismissed with prejudice. It is further ordered and adjudged that the appellants do have and recover of and from the appellee all of the costs in this Court and in the Court below to be taxed, for which and all of which let execution issue as at law.
Minute Book "BM" Page 87

Decree of Pike County Chancery Court

IN THE CHANCERY COURT OF PIKE COUNTY, MISSISSIPPI

No. 18,296

G. & K. INVESTMENT COMPANY

v.

NEWTON BRYANT, ET AL.

DECREE APPOINTING RECEIVER

This cause coming on this day to be heard on Application for the Appointment of a Receiver filed by G. & K. Investment Company, complainant in this cause, service of process on Geo. M. Harrison, D. A. Biglane, Floyd A. Williams,

Jr., Hale E. Roberts, Joe R. Scroggins, Wiley Fairchild, Nelson Case, W. K. Bowen and W. R. Fairchild, Wiley Fairchild, Douglas Fairchild and Rodney Fairchild, d/b/a W. R. Fairchild Construction Company, Ltd., answer by Newton Bryant, Monroe Bryant, Paralee Bryant Hartwell, Rosa Bryant, a non compos mentis, represented by James W. Bryant, Guardian, Lillie Mae Bryant, James W. Bryant, Lillian A. Carter, Jerry Lee Bryant, Charles B. Bryant, George W. Bryant, Jr., Joe R. Scroggins, D. A. Biglane, Geo. M. Harrison, J. C. Hutto, W. K. Bowen, Nelson Case, Hale E. Roberts, Floyd A. Williams, Jr., W. R. Fairchild Construction Company, Ltd., and Wiley Fairchild, which named defendants, together with the applicant are represented by counsel oral and documentary evidence, and the Court, after hearing and duly considering the same, finds:

That the Court has jurisdiction over the parties named in this proceeding together with the following described real estate situated in Pike County, State of Mississippi, to-wit:

> N½ of NW¼ of NW¼: NW¼ of SW¼: NE¼ of NW¼: SW¼ of NW¼: and S½ of NW¼ of NW¼: Section 14, Township 4 North, Range 8 East; and

That the evidence adduced on the application for the appointment of a Receiver fully sustains the fact that G. & K. Investment Company, together with the defendants, are claiming an oil, gas and mineral leasehold estate in the aforedescribed real estate which is common property, and the said interest of G. & K. Investment Company, as well as the interest of other claimants to the common property, is disputed and denied by the defendants in this proceeding, and the applicant is in actual and imminent danger of loss of this property and will sustain irretrievable and irreparable injury unless a Receiver is appointed to operate the oil, gas and mineral leasehold estate on the common property and to develop the same in accordance with the lessees' obligations provided for in the respective leases and the

law of the State of Mississippi, which management and development should be under the jurisdiction and supervision of the Court until the litigation and all issues, claims and titles in dispute are finally determined by the courts of competent jurisdiction.

Now, THEREFORE, it is hereby ordered, adjudged and decreed that Louis Alford be, and he is hereby appointed as Receiver to take over and possess the following described real estate, to-wit:

> N½ of NW¼ of NW¼: NW¼ of SW¼: NE¼ of NW¼: SW¼ of NW¼: and S½ of NW¼ of NW¼: Section 14, Township 4 North, Range 8 East;

and manage and develop the same as regarding all oil, gas and other minerals lying in, on and under said property, the Court being of the opinion that Louis Alford, because of experience and training, is capable in all things of managing and operating the said property, upon the said Louis Alford's filing with the Clerk of this Court a good and sufficient bond in the penal amount of $50,000.00 to be approved by the Clerk of this Court.

It is further ordered and decree that the Receiver shall promptly possess said property and shall manage and develop the same as regarding the oil, gas and other minerals lying in, on and under said property, in a lawful and prudent manner and under the directions and decrees of this Court.

The Receiver so appointed is directed to report immediately unto this Court the current status as regarding the operation and management of Bryant Well No. 1 and the drilling of Bryant Well No. 2 and likewise to file with this Court, for the Court's consideration and approval, all contracts now being performed by the parties thereto, and thereafter all contracts and obligations as regarding the management and development of the common property shall be with the prior approval of this Court.

The said Receiver is directed to proceed immediately to do all acts with reference to the management, control and possession of the common property which will best preserve and protect the common property for all parties in interest to be determined by the Court in this proceeding and other proceedings now pending in this Court.

ORDERED, ADJUDGED AND DECREED on this, the 24th day of January, A.D., 1959.

/s/ F. D. HEWITT
Chancellor

Copy

Office-Supreme Court, U.S.
FILED
JUN 8 1960
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 966

G. & K. INVESTMENT COMPANY, *Petitioner*,

v.

GEORGE M. HARRISON, NEWTON BRYANT, MONROE BRYANT, *et als.*

On Petition for a Writ of Certiorari to the Supreme Court of Mississippi

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

This is a controversy turning on two questions of Mississippi law, neither of which involves or can be made to involve any issue arising under the Federal Constitution.

1. The first question is whether a husband's right to inherit from a deceased wife is cut off by his subsequent bigamous marriage. Petitioner admits (Pet. 5) that Joseph

Knox married Lucile Brown without having divorced Alpha Bryant. It follows, as a matter of Mississippi law (*Minor* v. *Higdon*, 215 Miss. 513, 61 So. 2d 350), that Joseph Knox could not inherit from Alpha—and such inheritance is the sole foundation of petitioner's present claim.

2. The second question is whether a husband who has himself secured an invalid decree of divorce can thereafter have it set aside. Petitioner admits that Joseph Knox instituted divorce proceedings against Alpha Bryant and obtained a decree (Pet. 5), and that this decree was void (Pet. 6). Under Mississippi law, Joseph Knox cannot have that decree set aside (*Cratin* v. *Cratin*, on suggestion of error, 178 Miss. 881, 896-898, 174 So. 255). Consequently he cannot be declared the surviving heir at law of Alpha Bryant, who died before his lease to petitioner, with the result that petitioner's claim fails on this ground also.

3. Petitioner's efforts to inflate the foregoing issues of state law into issues arising under the Federal Constitution on their face beg the alleged Federal questions.

Thus, petitioner states the Question Presented (Pet. 2) to be:

> "Whether the Supreme Court of the State of Mississippi can *divest* petitioner, an assignee, of property lawfully vested in the original assignor by the Mississippi statute of descent and distribution, by creating a judicial exception to the statute, without violating the due process of law guaranteed to petitioner by the Fourteenth Amendment to the Constitution of the United States?"

We have italicized the word *divest*, because the question, plainly enough, is not whether petitioner can be divested, it is whether petitioner's assignor was ever vested in the first instance. As we have shown, and as the Supreme Court of Mississippi held (Pet. 8a-11a), it is plain that

under the two governing rules of Mississippi law involved, Alpha's interest never vested in Joseph; he was barred by his own acts from inheriting that interest.

A similar question-begging infects petitioner's rhetorical inquiry (Pet. 7),

> "How, within the ambit of the Fourteenth Amendment to the Constitution of the United States, is it possible that property *inherited* by a man from his wife in 1934 in accordance with the statute of descent and distribution of a state can be taken from his ultimate assignee by a court of that state 25 years later?"

Here our italicized word is *inherited;* as a matter of Mississippi law, petitioner's assignor Joseph Knox never inherited anything from his wife Alpha Bryant. He barred himself from any such inheritance by two voluntary acts before she died in 1934, viz., by his bigamous marriage to another woman in 1929 (Pet. 5), and then by his institution of divorce proceedings against Alpha in 1930 (Pet. 5-6).

4. Inasmuch as no substantial Federal question is involved in this case, it seems almost superfluous to point out that even the question now alleged was never properly presented below. Cf. Pet. 3-4. The reply brief which twice mentioned "due process of law" is certified separately and not as a part of the record; no claim of jurisdiction to review can be rested on such a document. E.g., *Lynch v. New York*, 293 U.S. 52, 54. And the order (R. 250-251) allowing petitioner's motion to perfect the record (R. 252-253), by including pleadings filed in the Chancery Court that similarly made vague references to the Fourteenth Amendment, does not show that those pleadings were even before the Supreme Court of Mississippi when it decided the case, much less that this order even remotely constituted a sufficient certificate to show that the Mississippi Supreme Court actually decided a Federal question. *Charleston Assn. v. Alderson*, 324 U.S. 182, 186, note 1.

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5. Accordingly, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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JUNE 1960.